

STATE OF MICHIGAN
COURT OF APPEALS

PENNY M. RUNNING, f/n/a PENNY M.
BROOKS,

Plaintiff-Appellee,

v

TIMOTHY J. BROOKS,

Defendant-Appellee,

and

EDWARD SHAFFER and SHIRLEY SHAFFER,

Intervening Parties-Appellants.

UNPUBLISHED
December 26, 2000

No. 223907
Genesee Circuit Court
Family Division
LC No. 90-167307-DM

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Plaintiff and defendant were divorced in 1994, following a brief marriage that produced two children, Travis and Randy. The judgment of divorce awarded physical custody of the children to plaintiff's parents, Edward and Shirley Shaffer (hereafter "appellants"). In 1997, plaintiff filed a petition for change of custody based upon a change of circumstances. Defendant subsequently filed a petition requesting joint physical custody of the children with plaintiff. Following an evidentiary hearing, the trial court awarded plaintiff and defendant joint legal and physical custody of the children and appellants were granted visitation. Appellants appeal as of right. We affirm.

Appellants argue that the trial court erred in changing custody. In a child custody case, the trial court's factual findings are reviewed under the "great weight" standard, the trial court's discretionary rulings are reviewed for an "abuse of discretion," and the trial court's legal decisions are reviewed for "clear legal error." MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). The trial court's findings are to be affirmed unless the evidence "clearly preponderate[s] in the opposite direction." *Id.* at 879, quoting *Murchie v Standard Oil Co*, 355 Mich 550, 558; 94 NW2d 799 (1959). To whom

custody is awarded is a discretionary dispositional ruling that is reviewed for an abuse of discretion. *Fletcher, supra* at 880-881.

The parties agree that the minor children had an established custodial environment with appellants.¹ Nonetheless, the statutory presumption that custody should not be changed when there is an established custodial environment absent clear and convincing evidence to the contrary, MCL 722.27(1)(c); MSA 25.312(7)(1)(c), conflicts with the presumption that the best interests of a child will be served by awarding custody to the natural parent, MCL 722.25; MSA 25.312(5). Under these circumstances, plaintiff and defendant were required to show by a preponderance of the evidence that a change of custody was in the children's best interests. *Straub v Straub*, 209 Mich App 77, 79-80; 530 NW2d 125 (1995); *Rummelt v Anderson*, 196 Mich App 491, 494-496; 493 NW2d 434 (1992).

Here, the trial court properly decided the custody issue by considering and evaluating the statutory best interest factors set forth in MCL 722.23; MSA 25.312(3). Appellants argue that the trial court erred in its findings with regard to factors (b), (c), (d), (e), (h), (i), (j), (k) and (l). After carefully reviewing the trial court's decision in light of the evidence adduced at trial, we are satisfied that the trial court's findings are not against the great weight of the evidence. *Fletcher, supra* at 876-877, 879. The trial court thoroughly reviewed the facts applicable to each of the factors and its findings are consistent with the evidence. In fact, the trial court issued an excellent, carefully reasoned, thirteen-page, single-spaced opinion and we adopt the trial court's findings as our own. Moreover, the trial court's ultimate decision to change custody is supported by the weight of the evidence and was not an abuse of discretion. *Id.* at 876-877, 880-881.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ William C. Whitbeck

¹ Because appellants were awarded physical custody of the children in the judgment of divorce, there is no question that they have standing to challenge the change of custody decision.